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IN THE HIGH COURT OF JUDICATURE OF CHHATTISGARH:BILASPUR

Writ Petition No. 994 of 2002.

PETITIONER APPLICANT : ~~Nagar Palik Nigam, Raipur~~ Raipur Development Authority
~~Through : Commissioner, Nagar Palik Nigam, Raipur (C.G.).~~
And through the C.E.O. R.D.A Bldg. Raipur.

VERSUS

RESPONDENT NON-APPLICANT : M/s Sarin Construction Company Raipur (C.G.)
Through : Shri Ashok Sarin S/o late Shri Chaman Lal Sarin, Sector - 3 Devendra Nagar, Raipur (C.G.)

P. R. No. ..... Presented by Shri ..... dated ..06..02..

PETITION UNDER ARTICLE 227 OF CONSTITUTION OF INDIA

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A.C.R.

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HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.994 of 2002

Raipur Development Authority

- Versus -

M/s Sarin Construction Company Raipur

POST FOR ORDER ON 24th MARCH, 2005

Sd/-
L.C. Bhadoo
Judge

24/3/2005

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HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.994 of 2002

Raipur Development Authority

- Versus -

M/s Sarin Construction Company Raipur

Present: -

Mr. B.P. Sharma, Advocate: For the petitioner.

Mr. Sunil Otwani, Advocate: For the respondent.

O R D E R

(Passed on 24th March, 2005)

L.C. BHADOO, J.

1. The petitioner has preferred this writ petition under Article 227 of the Constitution of India being aggrieved by order-dated 13.3.2002 passed by learned Additional District Judge (Special Judge), Raipur in Suit No.2-B/2000 whereby learned Additional District Judge has rejected the objection raised by the petitioner herein that the Additional District Judge has no jurisdiction to decide the application filed under Section 34 of the Arbitration & Conciliation Act, 1996.

2. Brief facts leading to filing of this petition are that a dispute had arisen between the parties and therefore, the matter was referred to the Arbitrator, who passed the arbitral award dated 11.12.1998 in favour of the respondent herein. Against the said award the petitioner herein moved an application under Section 34 of the Arbitration & Conciliation Act, 1996 (hereinafter shall be referred as to "the Act of 1996') in the Court of District Judge, Raipur for setting aside the said award. However, learned District Judge transferred that application to the Court of learned Additional District Judge (Special Judge) Raipur, which

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was registered as Suit No.2-B/2000. The petitioner herein by amending his pleadings challenged the jurisdiction of learned Additional District Judge (Special Judge), Raipur to deal with that application on the ground that learned Additional District Judge has no jurisdiction to decide the application filed under Section 34 of the Act of 1996. Amongst other issues, Issue No.1 was framed as preliminary issue objection regarding the jurisdiction and same was decided by learned Additional District Judge vide order dated 13.3.2002 against the petitioner herein holding that Additional District Judge has jurisdiction to decide the application under Section 34 of the Act of 1996.

3. The petition of the petitioner is that in view of the provisions of Sections 2(e) & 42 of the Act of 1996 only the District Judge, which is the Principal Civil Court of District, has the jurisdiction to decide the application under Section 34 of the Act of 1996. Moreover, the said application was filed before that court, therefore, that court was not entitled to transfer the said application to learned Additional District Judge. Therefore, the order impugned passed by learned Additional District Judge is perverse, illegal and contrary to law.

4. Return to this writ petition has been filed on behalf of the respondent in which it has been mentioned that the Court of Additional District Judge has also vested with the powers of District Judge to decide the cases. Moreover, the District Judge while exercising the powers under Section 24 of the CPC transferred the application to Additional District Judge, therefore, Additional District Judge is competent to decide the application and who is not inferior to the District Judge.

5. I have heard learned counsel for the parties.

6. Learned counsel for the petitioner argued that in view of the provisions of Section 2 (e) & 42 of the Act of 1996 and Section 3(17) of the General Clauses Act, the Additional District Judge has no jurisdiction to decide the application under Section 34 of the Act of 1996, for the

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reasons that as per Section 2(e) of the Act of 1996 the "Court" means the Principal Civil Court of the district and as per Section 3(17) of General Clauses Act the District Judge is the Judge of a Principal Civil Court and in view of Section 42 when any application with respect to an arbitration agreement is filed before the District Judge, the District Judge has no authority to transfer the said application and District Judge has to decide the application.

7. On the other hand, learned counsel for the respondent argued that in view of the provisions of Sections 7(2) and 8 of the M.P. Civil Court Act, 1958 (hereinafter shall be referred as to 'the Act of 1958") the Additional District Judge has been authorized to discharge any of the functions of a District Judge, including the functions of Principal Civil Court of original jurisdiction which the District Judge may, by general or special order, assign to him and in the discharge of such functions he shall exercise the same powers as of the District Judge. Therefore, in view of the above provisions the District Judge has rightly transfer the case to the Additional District Judge. In support of his arguments learned counsel for the respondent relied upon the decision of M.P. High Court reported in **1993 MPLJ 603** between **Vinod Kumar Jajodia and others Vs. Brij Bhushan Agarwal** and also on the decision of Karnataka High Court reported in **2002 (1) Arb. LR 530 (Karnataka)** between **Valliapa Software Technological Park (Pvt.) Ltd., Bangalore Versus C. Sundaram and others**.

8. Having heard learned counsel for the parties, I have perused the relevant records & provisions of law. In this connection, Section 2 (e) of the Act of 1996 defines the 'Court':

> "2(e) ***"Court"*** *means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a*

grade inferior to such principal Civil Court, or any Court of Small Causes"

Section 42 of the Act of 1996 envisages that:

> *"42. **Jurisdiction.**- Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court."*

In this connection Section 7 of the Act of 1958 envisages that:

> *"**7. Principal Civil Courts of original jurisdiction.** -*
> *(1) The Court of the District Judge shall be the Principal Civil Court of original jurisdiction in the civil district.*
> *(2) [An Additional District Judge] shall discharge any of the functions of a District Judge, including the functions of Principal Civil Court of original jurisdiction which the District Judge may, by general or special order, assign to him and in the discharge of such functions he shall exercise the same powers as the District Judge."*

Therefore, a conjoint reading of Sections 2(e) & 42 of the Act, leaves no manner of doubt that the Legislature intended to make only one Court- the principal Civil Court of original jurisdiction or, as the case may be, the High Court in exercise of its ordinary original jurisdiction, whichever Court is approached earlier, as the venue for all matters connected with an arbitration agreement; and award; and all arbitral proceedings. Sections 2(e) & 42 paraphrased in simple language, would mean that any application 'with respect to an arbitration agreement' will have to be filed in the principal civil Court of original jurisdiction in a district, or, as the case may be, in the original civil jurisdiction of the High Court, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit and that Court alone to which the application is filed shall have the jurisdiction over the entire arbitral

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proceedings to the exclusion of any other Court, having jurisdiction to decide the questions forming the subject-matter of arbitration. The language used in Section 42 with respect to an arbitration agreement is wide enough to include within its sweep an application for setting aside an arbitral award on grounds specified in Section 34 of the Act of 1996. Arbitral proceedings terminate by final award or by an order of the Arbitral Tribunal under sub-section (2) of Section 32 of the Act. But termination of the Arbitral proceedings is subject to Section 33 and sub-section (4) of Section 34 as visualized by sub-section (3) of Section 32. Section 42 of the Act would, therefore, be necessarily attracted in relation to an application under Section 34.

9. Now, if we read the provisions of Sections 2 (e) & 42 of the Act of 1996 along with Section 7(2) of Act of 1958, even though as per provision of sub-section 2 of Section 7 of the Act of 1958 the Additional District Judge has been authorized to discharge any of the functions of a District Judge, including the functions of principal civil court of original jurisdiction which the District Judge may, by general or special order, assign to him and in discharge of such functions he shall exercise the same powers as the District Judge. But the core question before the Court is whether the District Judge before whom the application under Section 34 of the Act of 1996 has been filed for setting aside the award is empowered to transfer that application by invoking the provisions of Section 24 of CPC & sub-section (2) of Section 7 of the Act of 1958 against the clear-cut mandate of provisions of Section 42 of the Act of 1996.

10. As discussed above Section 2 (e) and in view of overriding effect of Section 42 of the Act of 1996, it is abundantly clear that the Court of the Additional District Judge is not vested with the jurisdiction to entertain an application under Section 34 of the Act of 1996 and the District Judge cannot, by invoking the provisions contained in Section 7(2) of the Act of 1958 or Section 24 of CPC, transfer the application for its disposal to the Court of an Additional District Judge. An application for setting aside an

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award under Section 34 inasmuch as application "with respect to an arbitration agreement" as it is for "setting aside the arbitral award" and it is a matter of statutory compulsion that such application is made to the principal civil Court of original jurisdiction in a district or the High Court in exercise of its ordinary original civil jurisdiction' having jurisdiction to decide the questions forming the subject matter of arbitration if the same had been the subject-matter of a suit and it is again a matter of statutory mandate that the Court to which the application is made 'alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement', and the arbitral proceedings shall be made in that Court and in no other Court. The power to transfer/assign the application to any other Court, otherwise having jurisdiction to decide the questions forming the subject-matter of arbitration had it been the subject matter of a suit, has been impliedly taken away by Section 42 which is drafted in a language fraught with overriding effect. As the wordings used in Section 42 is that '*notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force,* then the wordings " *the Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court,* therefore, the language employed in this section only that the District Judge before whom the application under Section 34 has been made is competent to hear and he cannot transfer the said application to the Additional District Judge by invoking the provisions of sub-section (2) of Section 7 of the Act of 1958 against the mandate of law of Section 42 which clearly says that '*notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force'.* Therefore, in my considered opinion, in view of the above discussion the District Judge was not competent to transfer the application to the Additional District Judge (Special Judge) and consequent upon the Additional District Judge has no jurisdiction to try the said application. It is true that in view of Section 7(2) of the Act of 1958 the Additional District Judge can also discharge the functions of the

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principal civil Court and he is not a court inferior to the District Judge, therefore, the District Judge can transfer other matters, but in view of language of Section 42 of the Act of 1996 the District Judge cannot transfer the application filed under Section 34 of the Act of 1996 and for this view I am fortified by the judgment of Allahabad High Court reported in **AIR 1998 Allahabad 313** between **M/s I.T.I. Ltd., Allahabad and others Vs District Judge, Allahabad and others.**

11. Now coming to the case laws relied upon by learned counsel for the respondent, the judgment of M.P. High Court in Vinod Kumar Jajodia (supra) is of no help to the respondent herein, as the same is distinguishable on facts and same was relating to simple money suit and that is why the High Court held that in view of Sections 7(2) & 8 of the Act of 1958 the Additional District Judge was entitled to try the suit. In this matter the provisions of Section 42 of the Act of 1996 was not at all relevant and attracted. So far as the other judgment of Karnataka High Court relied upon by learned counsel for the respondent i.e. Valliapa Software Technological Park (Pvt.) Ltd., Bangalore (Supra) is concerned, this judgment is also of no help to the respondent herein, for the reason that in this case it has not been held that the principal city Civil Judge was entitled to transfer the application to the other City Civil Judges filed under Section 34 of the Act of 1996. In this case after interpreting the Section 2 (2) & (3), Section 3(1), Section 2(4) & Section 2(6) of Bangalore City Civil Courts Act of 1979 the High Court held that "*the application under Section 9 of the Act of 1996 was filed in the City Civil Court No.6 of Bangalore. By virtue of the order passed by the High Court the Principal City Civil Judge has allotted all the arbitration proceedings filed in the City Civil Court of Bangalore to 6th Additional City Civil Judge who sits in the Court Hall No.11. It is not a case of Principal City Civil Judge entertaining the application under Section 9 of the Act 1996 and then transferring the said application to the Court of 6th Additional City Civil Judge who sits in the Court Hall No.11.* Therefore, as the Principal City Civil Judge and Additional City Civil Judges were put on equal footing in view of the provisions of Bangalore City

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Civil Courts Act of 1979 and also in view of the High Court's order, the Principal City Civil Judge passed an order whereby it was directed that all the applications under Section 9 of the Act of 1996 shall be entertained by learned 6th Additional City Civil Court and those applications were being filed before that Court only and that was not a case where the application first filed before the Principal City Civil Judge and then it was transferred. Therefore, on facts the above judgment is also of no help to the respondent.

12. Learned counsel for the parties also cited some other judgments but they are not relevant to the point in controversy, therefore, they have not been discussed in this order.

13. In view of the foregoing discussion, I am of the opinion that the District Judge, Raipur, who is the Principal City Civil Court of the District, was not entitled to transfer the application filed under Section 34 of the Act of 1996 before him for setting aside the award in view of the provisions of Section 42 of the Act of 1996.

14. In the result, the petition of the petitioner deserves to be allowed, same is allowed and the order impugned dated 13.3.2002 is hereby set aside. The learned Additional District Judge (Special Judge), Raipur shall send back the record of the case to the Court of District Judge, Raipur for its disposal in accordance with law. No order as to costs.

15. Copy of this order be circulated among all the District Judges for their information and necessary action.

Sd/-
L.C. Bhadoo
Judge

Roshan/-